

# **EXECUTIVE COUNCIL OF IOWA AGENDA**

**State Capitol - Robert D. Ray Conference Room (G09) 10:00 a.m.**

**FEBRUARY 11, 2013**

1. Introduction of Attendees
2. Approval of minutes of meeting held February 4, 2013
3. Outside Counsel – Page 1  
TAB #s 1, 2 and 3
4. Litigation Expense – Page 1  
TAB # 4
5. Payment of Cost Items – Pages 1 - 2
6. Renewal Memberships – Page 3
7. Information Items – Page 4

**3. Outside Counsel**

- A. The Department of Justice, Attorney General's Office requests amendment of the existing contract from Dorsey & Whitney to Venable LLP.

**TAB # 1**

- B. The Department of Justice, Attorney General's Office requests amendment of the current contract with LaMarca & Landry, P.C., to include defense of the federal court litigation.

**TAB # 2**

- C. The Department of Justice, Attorney General's Office requests retention of outside counsel to provide legal services for the State Treasurer's Office, Unclaimed Property Division in regard to probate matters and Employee Retirement Income Security Act (ERISA). Attorney fees and costs will be paid from the Unclaimed Property Fund.

**TAB # 3**

**4. Litigation Expense Fund**

- A. Request from the Attorney General's office on behalf of the Department of Revenue to expend \$60,000.00 from the Litigation Expense Fund during the third quarter of the 2013 fiscal year.

**TAB # 4**

**5. Payment of Cost Items**

- A. Patterson Law Firm L.L.P. .... \$688.00  
729 Insurance Exchange Building  
505 Fifth Avenue  
Des Moines, IA 50309-2390  
Mary Kimball v. Woodward State Hospital School, State of Iowa and the  
Second Injury Fund

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment.

- B. Wandro & Associates, P.C. ....\$4,325.00  
2501 Grand Avenue, Suite B  
Des Moines, IA 50312  
Unclaimed Property Probate Matters

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment. Payment will be made from the Unclaimed Property Fund.

- C. LaMarca & Landry, P.C.....\$20,901.85  
1820 N.W. 118<sup>th</sup> Street, Suite 200  
Des Moines, IA 50325  
Godfrey v. State of Iowa et al, civil rights complaint

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment.

- D. Nyemaster, Goode, West, Hansell & O'Brien, P.C.....\$842.50  
700 Walnut Street  
Suite 1600  
Des Moines, IA 50309  
Collections of Accounts in Court

Julie Pottorff, Deputy Attorney General, has reviewed these invoices and recommends payment. Payment will be made from the funds of the Department of Economic Development.

- E. Dickinson, Mackaman, Tyler & Hagen, P.C.....\$1,606.50  
699 Walnut, Suite 1600  
Des Moines, IA 50309  
Regions Bank, Alabama Banking Corp. vs. Iowa Department of Revenue and Iowa Capital Investment Board

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment.

- F. McDowell, Rice, Smith & Buchanan.....\$141.35  
605 West 47<sup>th</sup> Street, Suite 350  
Kansas City, MO 64112  
Tobacco Settlement Authority

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment. Payment will be made from the funds of the Tobacco Settlement Authority.

- G. Davis Brown Law Firm.....\$32,217.50  
The Davis Brown Tower  
215 10<sup>th</sup> Street, Suite 1300  
Des Moines, IA 50309-3993  
Unclaimed Property Probate Matters & Employee Retirement Income Security Act (ERISA)

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment. Payment will be made from the Unclaimed Property Fund.

**6. Renewal Memberships**

- A. Consumer Advocate in National Association of State Utility Consumer Advocates in the amount of \$10,693.00 for 01/01/13 - 12/31/13. (Previous amount was \$9,612.00) Other agencies: None Funding Source: State General Fund-100%
- B. Alcoholic Beverages in Iowa Restaurant Association in the amount of \$450.00 for 01/01/13 - 12/31/13. (Previous amount was \$215.00) Other agencies: None Funding Source: State General Fund-100%
- C. Banking in Conference of State Bank Supervisors in the amount of \$92,745.85 for 07/01/12 - 06/30/13. (Previous amount was \$66,050.92) Other agencies: None Funding Source: Other-100% Industry Fees
- D. Insurance in North American Securities Administration Association in the amount of \$1,800.00 for 01/01/13 - 12/31/13. (Previous amount was \$1,800.00) Other agencies: None Funding Source: State General Fund-100%
- E. Corrections Anamosa in United States Police Canine Association in the amount of \$50.00 for 01/01/13 - 12/31/13. (Previous amount was \$40.00) Other agencies: None Funding Source: State General Fund-100%
- F. Education, Voc Rehab in Greater Burlington Chamber Of Commerce in the amount of \$294.00 for 1/01/13 - 12/31/13. (Previous amount was \$279.00) Other agencies: None Funding Source: Federal-78.7% State General Fund-21.3%
- G. Education, Iowa Public TV in Iowa Cable & Telecommunications Association in the amount of \$250.00 for 01/01/13 - 12/31/13. (Previous amount was \$250.00) Other agencies: None Funding Source: Other-100% IPTV Misc
- H. Iowa Department on Aging in National Association of Nutrition and Aging in the amount of \$165.00 for 01/01/13 - 12/31/13. (Previous amount was \$165.00) Other agencies: None Funding Source: State General Fund-100%
- I. Public Safety in Association of State Criminal Investigative in the amount of \$500.00 for 01/01/13 - 12/31/13. (Previous amount was \$500.00) Other agencies: None Funding Source: State General Fund-100%
- J. Secretary of State in The Election Center in the amount of \$700.00 for 05/01/13 - 04/30/15. (Previous amount was \$350.00) Other agencies: None Funding Source: State General Fund-100%

**7. Information Items**

Notification from the State Auditor's Office that funds previously allocated for ICN damages will be reverted and these allocations closed.

- A. Iowa Communications Network..... \$16,195.11  
On August 24, 2010 ICN equipment was damaged in Burlington, Des Moines County because of water damage due to high temperatures and humidity.
- B. Iowa Communications Network .....\$51,964.27  
June 2008 damage to communications equipment as a result of flooding in Linn County – Cedar Rapids Community Schools
- C. Iowa Communications Network ..... \$75,878.62  
June 2008 damage to communications equipment as a result of flooding in Linn County – Federal Courthouse in Cedar Rapids

EXEMPTED FROM

2013 FEB -7 AM 9:41

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL



TAB # 1

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319

Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

## Iowa Department of Justice

February 5, 2013

GeorgAnna Madsen  
Executive Secretary  
Executive Council  
State Capitol  
L-O-C-A-L

Re: Retention of Special Counsel

Dear GeorgAnna:

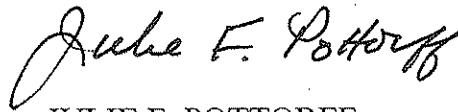
In July the Attorney General's Office requested Executive Council approval to retain special counsel to advise the Department of Transportation (DOT) during a complex project in Council Bluffs to make improvements to I-80 and I-29 that required relocation of two railroad mainlines, the elimination of a rail yard, and a change of rail service providers for railroad shippers, including Bartlett Grain and Western Engineering. The DOT needed legal advice about proceedings before the Surface Transportation Board as well as legal advice to respond to complaints by shippers as the project moved forward. The Executive Council approved retaining Ms. Kathryn Kusske Floyd and Mr. Jay Johnson of the Washington, D.C., office of Dorsey & Whitney.

Both Ms. Kusske Floyd and Mr. Johnson are moving to a new law firm: Venable LLP, 575 7<sup>th</sup> Street, NW, Washington, D.C., 20004. The DOT is pleased with the legal services of these attorneys and would like to continue with their legal services at the new firm. Ms. Kusske Floyd and Mr. Johnson are willing to continue the legal work under the same terms and conditions applicable under the current contract with Dorsey & Whitney. Ms. Kusske Floyd and Mr. Johnson are paid \$580 and \$530 per hour, respectively, with a 5% reduction for the State of Iowa plus expenses. All attorney fees and costs will continue to be paid from the funds of the DOT. With approval of the Executive Council we will amend the contract with the Washington, D.C., office of Dorsey & Whitney to transfer the contract for the services of Ms. Kusske Floyd and Mr. Johnson to Venable LLP.

GeorgAnna Madsen  
Executive Secretary  
Page 2

Accordingly, our office requests the Executive Council approve amending the existing contract from Dorsey & Whitney to Venable LLP in order to continue the working relationship of the DOT with Ms. Kusske Floyd and Mr. Johnson.

Sincerely,

A handwritten signature in black ink, reading "Julie F. Pottorff". The signature is written in a cursive, flowing style with a large initial 'J'.

JULIE F. POTTORFF  
Deputy Attorney General

cc: David Gorham, Special Assistant Attorney General

EXECUTIVE COUNCIL

2013 FEB -7 AM 9:41

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL



## Iowa Department of Justice

TAB # 2

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319

Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

February 6, 2013

GeorgAnna Madsen  
Executive Secretary  
State Capitol  
L-O-C-A-L

Re: Retention of Outside Counsel

Dear GeorgAnna:

Last January our office requested appointment of outside counsel pursuant to Iowa Code section 13.3(1) to represent the Governor and other state officials and employees in a civil rights complaint and state court litigation brought by Workers' Compensation Commissioner Christopher Godfrey based on a reduction in Mr. Godfrey's salary. With approval of the Executive Council George A. LaMarca of LaMarca & Landry, P.C., was retained to represent the defendants at the hourly rate of \$325 per hour with authority to utilize other associates and legal assistants or law clerks in the firm in the defense of these matters at the following rates: Andrew H. Doane at \$210 per hour; Philip J. De Koster at \$210 per hour; and legal assistants or law clerks at \$75 per hour. All rates for Mr. LaMarca and members of Mr. LaMarca's law firm are discounted. Attorney fees and costs are being paid from the General Fund.

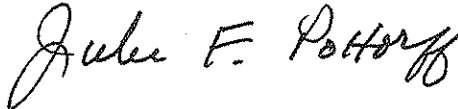
At the end of January, 2013, plaintiff's counsel, Roxanne Conlin, filed a Complaint in federal district court against the same individual defendants based on substantially the same factual allegations. *Godfrey v. Branstad et al.*, No. 4:13-cv-00042. Because the factual allegations are substantially the same as asserted in the state court litigation, our office believes that we should amend the existing contract with LaMarca & Landry, P.C., to include defense of the federal litigation as well. The contract would continue otherwise under the same terms and conditions. Mr. LaMarca is aware of the federal litigation and has agreed to amendment of the existing contract.



GeorgAnna Madsen  
Executive Secretary  
Page 2

Accordingly, our office requests that the Executive Council approve amending the current contract with LaMarca & Landry, P.C., to include defense of the federal court litigation under the same terms and conditions as the state court litigation.

Sincerely,

A handwritten signature in black ink, reading "Julie F. Pottorff". The signature is written in a cursive style with a large, stylized initial "J".

JULIE F. POTTORFF  
Deputy Attorney General

EXECUTIVE COUNCIL  
2013 FEB -7 AM 10:35

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL



## Iowa Department of Justice

TAB # 3

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

February 6, 2013

GeorgAnna Madsen  
Executive Secretary  
State Capitol  
L-O-C-A-L

Re: Retention of Special Counsel

Dear GeorgAnna:

Our office requests Executive Council approval to retain special counsel to provide legal advice to the Treasurer's Office on issues that arise under the Employee Retirement Income Security Act (ERISA) in connection with the disposition of unclaimed property. These issues typically arise in the context of pension, employee benefit and other ERISA-covered plans. Our office lacks expertise in these matters.

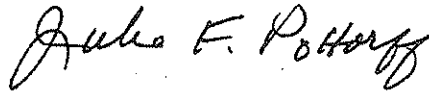
In 2008 the Treasurer's Office entered into a contract with The Davis Brown Law Firm, The Davis Brown Tower, 215 10th Street, Ste. 1300, Des Moines, IA 50309-3993, that extended until 2010 with two one-year options to renew. Because our office hadn't received any billings from the firm under this contract for some time, we did not initiate renewal of the contract. Apparently, the firm was providing legal services but failing to submit the bills. The firm has now submitted a bill for services going back to February, 2011. This bill is separately on the agenda.

In order to get the relationship between the firm and the Treasurer's Office back on track, we would like to execute a new contract at the current hourly rates charged by the firm. The work would be performed under the direction of David B. VanSickle and the firm would charge: \$310 per hour for David B. VanSickle; \$295 per hour for Margaret Van Houten and Julie J. McLean; and \$180 per hour for paralegals. All attorney fees and costs will be paid from the Unclaimed Property Fund.

GeorgAnna Madsen  
Executive Secretary  
Page 2

Accordingly, our office recommends that The Davis Brown Law Firm be approved as special counsel to handle ERISA matters for the Treasurer's Office that arise in connection with the disposition of unclaimed property.

Sincerely,

A handwritten signature in black ink, reading "Julie F. Pottorff". The signature is written in a cursive, flowing style.

JULIE F. POTTORFF  
Deputy Attorney General

cc: Karen Austin



TAB # 4

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

## Iowa Department of Justice

February 4, 2013

GeorgAnna Madsen  
Executive Secretary  
Executive Council  
State Capitol  
L-O-C-A-L

Re: Litigation Expense Fund

Dear GeorgAnna:

On behalf of the Department of Revenue, Assistant Attorney General Jim Miller requests authorization to expend monies from the Litigation Expense Fund pursuant to Iowa Code section 441.73 in the third quarter of the 2013 fiscal year. The Department started the 2013 fiscal year with a balance of \$681,671.24 which included a transfer of \$200,000 into the Fund as authorized by the Executive Council in June, 2012. From July 1 through September 30, 2012, the Department expended \$17,261.27 and from October 1 through December 31, 2012, the Department expended \$43,238.71.

Litigation expenses in the third quarter of the 2013 fiscal will involve an appeal of Cable One, Inc., property valuation contested cases with three small telephone companies, and judicial review from an ALJ's favorable ruling on a constitutional challenge to the replacement tax under Iowa Code chapter 437A. Litigation fees and expenses are estimated at \$60,000.

The Department, therefore, requests authorization to expend \$60,000 from the Litigation Expense Fund in order to cover estimated litigation fees and expenses for the third quarter of the 2013 fiscal year.

Sincerely,

A handwritten signature in cursive script that reads "Julie F. Pottorff".

JULIE F. POTTORFF  
Deputy Attorney General